McIntyre	Portman	Smith, Linda
McKeon	Poshard	Snowbarger
McKinney	Price (NC)	Snyder
McNulty	Pryce (OH)	Solomon
Meehan	Quinn	Souder
Meek	Radanovich	Spence
Menendez	Rahall	Spratt
Metcalf	Ramstad	Stabenow
Mica	Rangel	Stark
Millender-McDonald	Regula	Stearns
	Reyes	Stenholm
Miller (CA)	Riggs	Stokes
Miller (FL)	Riley	Strickland
Minge	Rivers	Stump
Mink	Roemer	Stupak
Moakley	Rogan	Sununu
Molinari	Rogers	Talent
Mollohan	Rohrabacher	Tanner
Moran (KS)	Ros-Lehtinen	Tauscher
Moran (VA)	Rothman	Taylor (MS)
Morella	Roukema	Taylor (NC)
Murtha	Roybal-Allard	Thomas
Myrick	Royce	Thompson
Nadler	Rush	Thornberry
Neal	Ryun	Thune
Nethercutt	Sabo	Thurman
Neumann	Salmon	Tiahrt
Ney	Sanchez	Tierney
Northup	Sanders	Torres
Norwood	Sandlin	Towns
Nussle	Sanford	Traficant
Oberstar	Sawyer	Upton
Obey	Saxton	Velazquez
Olver	Scarborough	Vento
Ortiz	Schaefer, Dan	Visclosky
Owens	Schaffer, Bob	Walsh
Oxley	Schiff	Wamp
Packard	Schumer	Waters
Pallone	Scott	Watkins
Pappas	Sensenbrenner	Watt (NC)
Parker	Serrano	Watts (OK)
Pascrell	Sessions	Waxman
Pastor	Shadegg	Weldon (FL)
Paul	Shaw	Weldon (PA)
Paxon	Shays	Weller
Payne	Sherman	Wexler
Pease	Shimkus	Weygand
Pelosi	Shuster	White
Peterson (MN)	Sisisky	Whitfield
Peterson (PA)	Skaggs	Wicker
Petri	Skeen	Wise
Pickering	Skelton	Wolf
Pickett	Smith (MI)	Woolsey
Pitts	Smith (NJ)	Wynn
Pombo	Smith (OR)	Yates
Pomeroy	Smith (TX)	Young (AK)
Porter	Smith, Adam	Young (FL)

NOES—2

Barton	Kucinich

NOT VOTING—6

Ganske	Kaptur	Tauzin
Granger	Slaughter	Turner

□ 1827

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

EXTENDING EFFECTIVE DATE OF INVESTMENT ADVISORS SUPERVISION COORDINATION ACT

Mr. GILLMOR. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 410) to extend the effective date of the Investment Advisors Supervision Coordination Act, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. EVERETT). Is there objection to the request of the gentleman from Ohio?

Mr. MANTON. Mr. Speaker, reserving the right to object, I am pleased to join the gentleman from Ohio [Mr. GILLMOR] on this unanimous consent request, and I rise in strong support of S. 410, a bill that will simply extend the effective date of the Investment Advisors' Supervision Coordination Act for 90 days.

This act was passed last year as title III of the National Securities Markets Improvement Act. In essence, this title shifts the registration and regulatory responsibility for smaller advisors from the SEC to the State where the advisors have their principal place of business. Without S. 410, the Securities and Exchange Commission will have inadequate time to comply with this title which could, in turn, jeopardize State regulatory and enforcement programs.

Mr. Speaker, our goal in enacting this provision was to allow for more efficient and effective regulation of the investment advisory industry and the 22,500 investment advisors currently registered with the SEC. Under the new set of rules, the SEC is the primary regulator of advisors with assets under management of $25 million or more, while those advisors handling assets below this amount are required to register and be regulated by their State.

The new system, set up by last year's bill, requires a great deal of coordination and interaction between State and Federal regulators. By providing the Commission with an additional 90 days to complete its work under this provision, we will give investment advisors much needed time to comply with the new rules and thereby avoid any disruption of the State's regulatory efforts.

I would like to commend the SEC for all of its hard work in getting their rulemakings out for public comment by December of last year. However, understanding the amount of work still needed to be done, I urge all of my colleagues to support S. 410 so that the SEC has sufficient time to implement the important reforms intended by this title.

I would like to thank the gentleman from Ohio [Mr. OXLEY] for addressing the SEC's concerns in this matter in such a timely fashion.

Mr. DINGELL. Mr. Speaker, I rise in strong support of S. 410, a bill that would extend the April 9 effective date of the Investment Advisers Supervision Coordination Act by 90 days to July 8, and urge its immediate adoption by the House.

These investment adviser provisions were enacted as title III of the National Securities Markets Improvement Act in October of last year. The process by which a final agreement was brokered between the House and the Senate involved a take-it-or-leave-it package that was delivered by the Senate to the majority on Friday, October 27, and to the minority conferees on Saturday, October 28, a mere 3 hours before the conference report was due to be taken up on the House Floor. We were reading the final language on the House Floor in the minutes before it was brought up, leaving no time or process for the correction of technical errors or substantive problems. S. 410 corrects the problems created by the other body having allowed just 180 days, or 6 months, for the Securities and Exchange Commission to adopt all the necessary rules and rule changes, and for the necessary registrations and deregistrations to be effected at both Federal and State levels as required by the act. This timing makes absolutely no sense and would result in the statutory reforms being frustrated and would provide regulatory breaches for crooks to operate in.

To remind my colleagues, the number of investment advisers registered with the SEC has increased dramatically from 5,680 in 1980 to approximately 22,500 today. By 1995, the SEC was able to examine smaller advisers on a routine basis only once every 44 years on average. Investment advisers, no matter what their size and complexity, only pay a one-time fee of $150 to register when they apply for SEC registration. House efforts over three Congresses to enact an industry-crafted graduated-user-fee table to give the SEC more resources to supervise investment advisers were repeatedly frustrated by opposition in the other body. Alternatively, therefore, title III of NSMIA, among other things, reallocates Federal and State responsibilities for the regulation of approximately 22,500 investment advisers currently registered with the SEC by providing that the SEC will be the primary regulator of first, investment advisers managing assets of $25 million or more and second, investment advisers to registered investment companies, with smaller investment advisers required to be registered with and regulated by the State in which the adviser has its principle office and place of business. The role of the States is not entirely preempted for federally regulated investment advisers. A State where an adviser has a place of business may continue to require licensing of the adviser's individual representatives. Moreover, NSMIA also preserves the right of States to bring enforcement actions for fraud and deceit against any adviser, and to require notice filings of all documents filed with the SEC, as well as a consent to service of process. Furthermore, the availability of the Federal preemption is conditioned on the payment of current fees for the next 3 years. Title III also requires the SEC to establish and maintain a readily accessible telephone hot-line for investors to access information about disciplinary actions and investor complaints, if any, involving investment advisers they contemplate doing business with.

As Members can clearly see, this new scheme involves a lot of hard work and coordination between State and Federal regulators. The SEC is to be commended for getting a very complex set of rulemakings out for public comment in December. The proposals have received a large number of thoughtful comment letters and the agency is actively reviewing them and working toward final rules and forms as well as interpretative responses to a myriad of complex questions. However, it is nowhere within the realm of possibility for all this work to be completed by April 9. It is unfortunate that the author of the investment adviser provisions did not provide for an adequate and reasonable effective date. S. 410 corrects that deficiency so that the important reforms of title III can be achieved.

Mr. MARKEY. Mr. Speaker, I rise in support of S. 410, the Investment Advisers Coordination Act.

This bill would extend the April 9 effective date of the Investment Advisers Supervision Coordination Act by 90 days to July 8. This change is needed to give the SEC time to adopt appropriate rules, and for the necessary registrations at both the Federal and State levels to be made, as required under the act. Unfortunately, because this title of the National Securities Markets Improvement Act was added by the Senate at the last minute, it contains several technical and other drafting errors, some of which require correction. Giving the SEC additional time to issue its rules before the title becomes effective will prevent any regulatory gaps from developing.

While I strongly commend the SEC's Herculean efforts to promulgate a complex package of rules within the tight time limits set by the Improvement Act, I am compelled to express serious concerns with certain aspects of the SEC's proposed rules that, if uncorrected, will have a highly negative impact on investors. I note and concur with the comment letters submitted to the SEC by the Secretary of the Commonwealth of Massachusetts and the Office of the Attorney General. For the benefit of Members, I included copies of these letters in the RECORD at the end of my remarks.

It is important to keep in mind that Congress struck a careful balance in the Improvement Act's investment adviser provisions between the roles of the SEC and of the States. I am very concerned that the SEC's proposed definitions of investment adviser representative [IAR] and of place of business seek to limit the authority of State regulators beyond the intent of Congress. The definition of IAR is so different from the NASAA Uniform Securities Act as to virtually guarantee a wide divergence between State investment adviser registration requirements and SEC investment adviser registration requirements for firms having investment adviser representatives. I therefore strongly urge the SEC to withdraw the proposed definition and for the SEC and NASAA to move quickly to develop a national uniform definition of the term that both levels of government can support.

I am also concerned that the place of business definition in the SEC's proposed rule could impede the ability of State regulators to take action against fraudulent or deceptive practices by investment advisers over the phone or the Internet. I urge the SEC to assure that State regulators will be fully capable of protecting investors from false or deceptive telemarketing or Internet-directed activities by investment advisers.

I also strongly oppose the SEC's attempts to broaden the scope of the Improvement Act's Federal preemption for SEC-registered investment advisers and supervised persons beyond that contemplated by the Congress. Congress refused to place overly broad and unwise restrictions on the ability of the States to police the licensing of and prosecute fraudulent advisers and their representatives. It is incomprehensible that the SEC would willfully roll back State protections that Congress intended to apply, thereby leaving investors prey to abusive practices by unscrupulous advisers and planners seeking to avoid State regulation and enforcement authority.

Finally, I would note that the Improvement Act contains a provision mandating establishment of a toll-free 800 number or Internet site that investors can use to check on the disciplinary records—if any—of their investment adviser and its supervised persons. It is consistent with the intent of the Congress for the Commission to delegate this responsibility to the self-regulatory organization which already administers the broker-dealer hotline—the NASD. In doing so, the SEC must assure that the NASD is effectively disseminating all the information that investors need to make informed choices about the financial professionals they are considering doing business with, whether the NASD is carrying through on the commitments it has made to expand the types of disclosable information disseminated to investors, whether the NASD is carrying out its promise to do more to publicize the existence of the hotline, and whether the NASD is moving quickly to provide for Internet access.

Again, while I have some concerns about some of the pending rulemaking efforts and intend to closely monitor implementation, I rise in support of this bill.

THE COMMONWEALTH OF MASSACHUSETTS, SECRETARY OF THE COMMONWEALTH,

Boston, MA, February 7, 1997.

Re rules implementing amendments to the Investment Advisers Act of 1940; release No. IA–1601; file No. S7–31–96.

Mr. JONATHAN G. KATZ,

Secretary, U.S. Securities and Exchange Commission, Washington, DC.

DEAR SECRETARY KATZ: I am writing to formally comment as the Chief Securities Regulator of the Commonwealth of Massachusetts on the above-captioned proposed rules.

I am gravely concerned that several of the proposed rules will seriously and adversely affect Massachusetts investors. In many instances these proposed rules are in direct conflict with the intent of the NSMIA as annunciated by various members of Congress in the Congressional Record. As an active participant in the external discussions relating to NSMIA, I am very disturbed to see rulemaking that so clearly contradicts the often stated and well understood purpose of this statute. In particular, the attempt of the Commission to define the term ''investment adviser representative'' and thus limit the authority of state regulators is a direct contradiction of the Act in which Congress deliberately declined to define the term. Under the terms of the Act, only the states are specifically required to license or otherwise qualify investment adviser representatives. The authority to license must, by implication, contain the ability to define. The Commission should not impede the rights of the states in this regard.

Of even greater concern to Massachusetts consumers would be the effect of the proposed preemptions of state enforcement authority against dishonest or unethical conduct which does not rise to the level of fraud. This proposed rule is clearly anti-consumer and would provide safe harbor to those who deftly mislead. Moreover, it has the potential to drain the resources of state enforcement authority by possibly causing them to repeatedly litigate the enforceability of state regulation on a case by case basis. I strongly urge this portion of the rule be significantly amended or stricken.

Another portion of the proposed rule which represents an inappropriate preemption of state authority would be the effect of the proposed rule to limit state authority over investment adviser representatives to those that provide advice to natural persons. Such a preemption would leave a significant void in the regulatory plan. Not only small businesses would be left unprotected, but also many family trusts, retirement trusts and charitable institutions. This is a most unwise and unnecessary restriction.

On behalf of Massachusetts investors, I strongly object to the proposed exemption for individuals licensed as broker dealer agents from the definition of investment adviser representatives. This is a wholly inappropriate exemption since investment adviser representatives are fiduciaries who are much more likely to have discretion over client funds and, therefore, should be held to a different and higher standard.

Lastly, I would urge the Commission to eliminate the term ''regularly'' from the definition of ''place of business''. The use of this undefined term can only cause confusion in the interpretation of the rules particularly in an era of multiple media communications by investment agents.

All of these are significant issues which I urge the Commission to address before proceeding further with the rules.

Respectfully submitted,

WILLIAM FRANCIS GALVIN,
Secretary of the Commonwealth.

THE COMMONWEALTH OF MASSACHUSETTS, OFFICE OF THE ATTORNEY GENERAL,

Boston, MA, February 10, 1997.

Mr. JONATHAN KATZ,

Secretary, U.S. Securities and Exchange Commission, Washington, DC.

DEAR SECRETARY KATZ: Thank you for the opportunity to comment on the SEC's proposed Rules Implementing Amendments to the Investment Advisers Act. The Commission should be commended for continuing the efforts begun last Congress, with the National Securities Market Improvement Act of 1996 (''NSMIA''), to eliminate existing duplicative and inconsistent federal and state oversight efforts which sometimes result in greater delay, expense, and confusion without any apparent tangible benefit to investors. I have been very supportive of the federal/state efforts to streamline specific regulatory areas, such as mutual fund disclosure practices.

However, I am writing today to reiterate the important protections and preventative measures afforded by state regulatory and enforcement action. As a state Attorney General who often prosecutes enforcement cases involving fraud and deception in the securities and financial services area, I believe, as I did when the legislation was under consideration, that it is critical to preserve the necessary state enforcement powers in the area of sales and distribution practices.

On many of the occasions when my office investigates and prosecutes consumer protection related issues, elders are all too often the victims of fraudulent or deceptively sold investment schemes, financial planning abuses and other financial exploitation. In my opinion, protection of these small dollar, often elderly investors generally is provided by vigorous state involvement in the securities area. Yet, some of the language of the proposed Rules, through which the Commission attempts to achieve national uniformity, suggest an unknown, if not troublesome, impact on the states' ability to investigate, prosecute and regulate these areas. I especially feel compelled to bring this to the Commission's attention, given that I have made elder protection a top priority in my present tenure as President of the National Association of Attorneys General, and in my past 14 years as a public prosecutor.

For example, language which purports to prohibit states from prosecuting or regulating ''dishonest'' or ''unethical'' business practices could seriously impede the broader state antideception and fraud enforcement efforts. The Commission's attempt to implement a new, narrow federal standard in this area is unwise and constitutes a clear threat to investor protection. In Massachusetts, for

example, cases involving deception may be difficult to pursue under the Commission's standard. Moreover, cases that typically are pursued by a rigorous Attorney General or state securities division, may not trigger the Commission's or the U.S. Attorney's inquiry or involvement, particularly given that the Commission only audits smaller investments once every four years.

Additionally, the Commission should proceed cautiously before implementing rules which may have an adverse impact on state revenue, and more importantly may place broad and unwise restrictions on the ability of state regulators, securities agencies and legislatures to police the licensing of and prosecute fraudulent brokers, dealers, advisers, planners and their agents. In particular, the definition proposed by the Commission seeks to limit state registration and licensing requirements to include only those ''investment adviser representatives'' who provide advice to clients who are ''natural persons.'' This specifically excludes ''investment adviser representatives,'' whose clients are investment companies, businesses, educational institutions, charitable institutions and other entities, but who historically have been regulated by the states, not the Commission. Indeed, this would preempt even minimal criteria established by securities enforcement authorities in virtually all states which often protects less-sophisticated retail entities, such as small businesses and charitable institutions. In the wake of the New Era debacle and other large-scale scams targeting our non-profit sector, I urge the Commission not to leave our public charities easy prey to abusive sales practices in the investment area.

The Commission's definition of ''place of business'' limiting state registration and qualifications to those who have ''regular'' contact with residents of Massachusetts also is troublesome in light of the telemarketing and Internet activities by unscrupulous investment advisers, many of whom prey on the elderly and less sophisticated investors. Of questionable legality in our federalist system, this limitation on the reach of state law to protect its own citizens may make it even more difficult for state prosecutors to target and punish fraudulent out of state telemarketers who frequently relocate and purposefully avoid physical presence in various states. This proposed federal definition of ''place of business'' inevitably will cause confusion and legal challenge given that jurisdictional issues raised by Internet activities remain unresolved. Without a more comprehensive definition, this could result in unfettered telephone or Internet-directed contact to any Massachusetts residents given the uncertainties surrounding where a person who sends out a general message on the Internet is doing business. Courts only now are beginning to address such questions arising out of where the computer is located, where the home page is listed, and where all or some of the customers or potential customers reside.

Finally, in the Commission's otherwise prudent efforts to streamline and eliminate duplicative state/Commission registering and de-registering within the same year, it proposes a standard by which new applicants could avoid state qualification (and registration) based on a ''reasonable expectation'' they will exceed $25 million in assets. However, this standard is subject to manipulation, may be difficult to monitor, may result in arbitrary enforcement, and may become vulnerable to abuse by unscrupulous advisers seeking to avoid state regulation and authority.

Congress attempted to maintain the correct balance while promoting uniform regulation and more efficient division of responsibility for regulation between the Federal and State governments. The Commission should avoid now setting forth sweeping and legally unsound federal preemption standards, that could endanger elderly and other small dollar investors by adversely impacting state enforcement of state securities anti-fraud and consumer protection statutes. In addition, the continued state-level registration and review of small dollar/regional securities offerings, investment advisers and financial planners is essential to consumer protection.

I urge the Commission to promulgate rules that will ensure that federal laws continue to permit states to gather the resources and retain the authority to effectively and comprehensively continue their role in securing investor protection and market integrity.

Thank you for your consideration.

Sincerely,

SCOTT HARSHBARGER,
Attorney General.

Mr. GILLMOR. Mr. Speaker, will the gentleman yield to me under his reservation for an explanation?

Mr. MANTON. I yield to the gentleman from Ohio.

Mr. GILLMOR. Mr. Speaker, I thank the gentleman for yielding. As the gentleman has said, this bill does provide a 90-day extension of the effective date of title III of the National Securities Markets Improvement Act of 1996. The reason for the extension, which has been requested by SEC Chairman Arthur Levitt, is necessary to ensure the orderly implementation of the provisions of the Investment Advisors Supervision Coordination Act, which is title III of the Improvement Act.

Pursuant to that act, the regulatory status of over 22,000 investment advisors in the country will change. The SEC has proposed rules that will guide the investment advisors as to whether they are subject to either Federal or State regulation under the act, as opposed to being subject to regulation at both the Federal and State levels under the current law.

Chairman Levitt has expressed concerns that the effective date of title III, which is April 9, will not permit adequate time to permit investment advisors to consult with counsel to determine their regulatory status, and to submit the necessary forms to the commission to deregister if they are deemed to be small advisors and therefore subject to State, rather than Federal, regulation.

Lack of sufficient time would cause these small investment advisors, who are intended by the act to be regulated by the States, to be unable to deregister from the Commission prior to the effective date. That would result in the State being preempted from regulating the very advisors that they are intended to regulate under the act.

Accordingly, the Chairman has requested this extension in a letter to the gentleman from Virginia [Mr. BLILEY], the Chairman of the Committee on Commerce, dated February 12. This is a responsible request that I strongly support. I think Congress in the last session marked a significant achievement with the passage of the improvement act, which is going to bring greater efficiency and effectiveness to the regulation of U.S. security markets, including the regulation of investment advisors, and I would urge my colleagues to support S. 410.

Mr. MANTON. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 410

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF EFFECTIVE DATE.

Section 308(a) of the Investment Advisers Supervision Coordination Act (110 Stat. 3440) is amended by striking ''180'' and inserting ''270''.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider to laid on the table.

GENERAL LEAVE

Mr. GILLMOR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on S. 410.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 5 of rule 1, the pending business is the question de novo of the Speaker's approval of the Journal.

Pursuant to clause 1, rule I, the Journal stands approved.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House a communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 18, 1997.

Hon. NEWT GINGRICH,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Under Clause 4 of Rule III of the Rules of the U.S. House of Representatives, in addition to Ms. Julie Perrier, Assistant Clerk, I herewith designate Ray Strong, Assistant Clerk, to sign any and all papers and do all other acts for me under the name of the Clerk of the House which he would be authorized to do by virtue of this designation, except such as are provided by statute, in case of my temporary absence or disability.

This designation shall remain in effect for the 105th Congress or until modified by me.

With warm regards,

ROBIN H. CARLE,
Clerk, House of Representatives.